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1915 F 1157, *note*; *Johnston v. Knipe*, 260 Pa. 504. The situation under the English Bills of Exchange Act is somewhat in doubt. The Divisional Court in *Herdman v. Wheeler* [1902], 1 K. B. 361, held the payee not to be a holder in due course, and the Court of Appeal in *Lloyd's Bank v. Cooke* [1907], 1 K. B. 794, on almost identical facts reached the opposite conclusion basing their decision on the ground of estoppel. For the sake of uniformity, if for no other reason, it is gratifying to see Nebraska adopt the prevailing view under N. I. L. after being in the minority before the statute was adopted. For an interesting discussion of uniformity under N. I. L. see 59 U. OF PA. L. REV. 471.

BULK SALES ACT—TRANSFER TO CORPORATION ORGANIZED TO TAKE OVER AND CONTINUE THE BUSINESS—APPLICABILITY OF STATUTE.—The officers of an insolvent corporation organized a new corporation and transferred to the new corporation, which was organized to take over and continue the business, a substantial portion of the assets of the insolvent corporation, without complying with the Bulk Sales Act. *Held*, The transfer was within the Bulk Sales Act and void. *Keedy v. Stealing Electric Appliance Co.*, (Del. 1921), 115 Atl. 359.

But few cases have passed upon this phase of the question and they furnish a diversity of conclusion. Upon the one hand is the holding in *Maskell v. Alexander*, 100 Wash. 16 to the effect that the transfer of an entire business to a corporation organized to take over the business in consideration for stock in the new corporation is not a transfer within the Bulk Sales Act. This decision was upon the ground that the sale was not for cash, but for corporate stock, which was as available for the satisfaction of the claims of the creditors after the transfer of the merchandise as the merchandise was before. Wherefore the transaction did not violate the object of the law, which it was said was to prevent a vendor from selling his stock of goods, pocketing the proceeds, and leaving his creditors remediless. An inferior court in *West Shore Furniture Co. v. Murphy*, 141 N. Y. Supp. 835, assumed, as did the principal case, that the transfer was within the act. Evidently these courts interpret the statute strictly, and construe the act as an absolute prohibition against all sales not made in the ordinary course of business, instead of a prohibition against only those transfers which would work to the detriment of the creditors. This was the view taken by the court in *Marlow v. Ringer*, 79 W. Va. 568. In that case A and B having stocks of goods of equal value formed a partnership. As to whether this was a transfer within the statute the court said "this realignment of interest of course did not work any impairment or diminution in the value of the property that could be subjected to the payment of the transferor's debts. But as the statute expressly condemns as void the sale in bulk of any part of a stock of merchandise otherwise than in the ordinary course of trade, and in the regular and usual prosecution of the seller's business" the transfer was held to be within the statute. The Bulk Sales Act being in derogation of the common law and a restriction upon alien-

ation, it would seem that the Washington court has taken the better view in construing the act to be a prohibition against only such transfers as would work to the detriment of the creditor. Hence it would seem that a transfer to a corporation in return for a stock should not be within the statute for the debtor's property remains the same in value.

CONTRACTS—AGENCY—WHEN HAS A BROKER PERFORMED SO AS TO BE ENTITLED TO A COMMISSION?—Plaintiff, a broker, sued for his commission under an agreement by the terms of which he was to find a purchaser for land on or before March 14, 1915. On March 10th, plaintiff mailed a notice to defendant's intestate stating that he had procured a purchaser, and the prospective purchaser sent to the vendor an unqualified acceptance of his offer. Other efforts were made by the broker and prospective purchaser to notify defendant's intestate that the purchaser was ready, willing, and able to buy on the terms specified. The facts indicated that failure to complete the transaction was caused through the evasions of the vendor. *Held*, plaintiff was entitled to recover on the ground that his letter mailed March 10th was notice to defendant's intestate and binding on him from the time it was deposited in the mail. *Lingquist v. Loble* (Montana, 1922), 204 Pac. 170.

The court seems to indicate that the acceptance mailed by the broker within the time specified was essential to his right of recovery, and numerous cases are cited holding that an acceptance is binding from the time it is mailed. It would seem, however, that this principle of contract is not applicable to this case. The broker has very few of the characteristics of an ordinary agent. The agreement between broker and vendor is ordinarily susceptible of either one of two interpretations. The broker may be in the position of one to whom the vendor has made an offer of a unilateral contract. The owner offers to pay a commission if the broker will perform certain acts, i. e. find a purchaser. The broker under this interpretation does not agree that he will find a purchaser. He may, however, accept the owner's offer and thus change it into a binding contract by the performance of the act stipulated, *MECHEM ON AGENCY*, (Ed. 2), § 2429, or the agreement may be construed as a bilateral contract, 20 MICH. L. REV. 788. If the first interpretation is adopted, then finding a purchaser would seem to constitute a sufficient acceptance of the offer, notice being essential only as a condition subsequent. See *Brown v. Smith*, 131 Mo. App. 59; *Veale v. Green*, 79 S. W. 731; *Cf. Bishop v. Eaton*, 161 Mass. 496. However, if the contract between the principal and broker be construed as bilateral, then the question arises has the broker sufficiently performed his undertaking so as to be entitled to a commission and was notice as given in his letter of March 10th essential to his cause of action. Even under this theory, it would seem that the notice within the time specified was not material. The understanding was that he find a purchaser within the time who was ready, willing and able to purchase. Where the understanding was to sell land within a specified time, it was held that if the buyer was actually found within that time although not reported to the principal until afterward, the broker